

<p>1 margin?</p> <p>2 A Yes.</p> <p>3 Q And was that a decision that you made?</p> <p>4 A Yes.</p> <p>5 Q And why did you make that decision?</p> <p>6 A It was too risky.</p> <p>7 Q And what do you mean by too risky, if you 8 can --</p> <p>9 A Well --</p> <p>10 Q -- explain what you mean by that to me?</p> <p>11 A Well, I had purchased -- in the early 2000s I 12 had purchased stock on margin and then got margin costs, 13 and enough said. I didn't like that experience.</p> <p>14 Q And do you know what the current value of your 15 portfolio is?</p> <p>16 A Yes.</p> <p>17 Q And what is it?</p> <p>18 A Now, after the week? Probably about 110,000.</p> <p>19 Q Oh, and I'm sorry. I forgot to ask this. Did 20 you ever make any purchases of Wave on margin?</p> <p>21 A No, I don't think so; uh-uh.</p> <p>22 Q How much has the value of your portfolio 23 fluctuated over the last three years?</p> <p>24 A By about probably \$70,000.</p>	<p>Page 78</p> <p>1 haul; companies that are in a new market. And so it's 2 relatively untested, unknown what those -- what the 3 product will do in that market, that sort of thing.</p> <p>4 Q And did you understand Wave Systems to be one 5 of those types of companies when you purchased the 6 stock?</p> <p>7 A Well, I knew that -- the product that they were 8 selling was a Wave Securities system that would be 9 installed in the -- embedded in the -- what do you call 10 it, the Intel computers. So you -- the risk is or the 11 bet is that because the stock -- because the securities 12 system is embedded, people will, as they have done with 13 Microsoft products, Internet Explorer and so on -- they 14 will have it to purchase. It's right there for them.</p> <p>15 So the gamble or the risk is that they might 16 not; people might not. We felt, of course, that --</p> <p>17 Q And did you understand this to be a new market?</p> <p>18 A Yes.</p> <p>19 Q And do you recognize that a company's revenue 20 varies quarter to quarter?</p> <p>21 A Sure.</p> <p>22 Q And do you recognize that a company's quarterly 23 revenues depend on or can depend on a variety of market 24 forces beyond its control?</p>
<p>1 Q And has it gone up or down?</p> <p>2 A Down.</p> <p>3 Q And do you recognize that investments and 4 stocks involve risks?</p> <p>5 A Yes.</p> <p>6 Q Okay. And what are some of those risks?</p> <p>7 A The earth could go up in flames. That would be 8 the big one; earthquakes. I own some Sirius stock. 9 Their satellite could fall to the earth and burn up and 10 then they're out of business. In other words, 11 catastrophes, economic debacles, crooked CEOs, fickle 12 buying public could affect the stock.</p> <p>13 Q So you understand that a company's stock can go 14 up or down based on forces --</p> <p>15 A Sure.</p> <p>16 Q -- outside the control of the company?</p> <p>17 A Absolutely.</p> <p>18 Q Are some companies riskier stock purchases than 19 others?</p> <p>20 A Yeah, certainly.</p> <p>21 Q What types of companies are riskier stock 22 purchases?</p> <p>23 A Well, companies that are -- that lack backup 24 funding supportive of funding or resources for the long</p>	<p>Page 79</p> <p>1 A Yes.</p> <p>2 Q Have you ever bought or sold a security to 3 achieve a tax benefit?</p> <p>4 A Security. I'm not aware of that. I have 5 bought one thing that I know of for a tax benefit, and 6 it was not a security.</p> <p>7 Q And what was that?</p> <p>8 A Boston Capital.</p> <p>9 Q Okay. So was it a DPP, a direct participation 10 program?</p> <p>11 A Yeah, a partnership.</p> <p>12 Q Is that right?</p> <p>13 A Right.</p> <p>14 Q You bought a tax credit fund?</p> <p>15 A Yes.</p> <p>16 Q Have you ever bought the stocks or bonds of any 17 other companies other than Wave that are in the digital 18 security industry?</p> <p>19 A Digital security. Digital security industry.</p> <p>20 No, I don't think so.</p> <p>21 Q Do you read any financial or business 22 publications regularly?</p> <p>23 A No.</p> <p>24 Q Do you have a subscription to the Wall Street</p>

<p style="text-align: right;">Page 82</p> <p>1 Journal?</p> <p>2 A No. I use my friends.</p> <p>3 Q Did you used to have a subscription to the Wall Street Journal?</p> <p>4 A No, no.</p> <p>5 Q What about the New York Times?</p> <p>6 A Same.</p> <p>7 Q Okay. I'm just going to go through a short list. Baron's?</p> <p>8 A No.</p> <p>9 Q Smart Money?</p> <p>10 A No.</p> <p>11 Q Fortune?</p> <p>12 A I've just seen an occasional magazine. Never subscribed.</p> <p>13 Q So I could go through a long list.</p> <p>14 A Yeah.</p> <p>15 Q You don't subscribe to any --</p> <p>16 A No.</p> <p>17 Q -- business publications?</p> <p>18 A Years ago I subscribed to Money.</p> <p>19 Q Okay. And when did your subscription to money expire?</p> <p>20 A Oh, gosh, probably 1995, you know, mid '90s.</p>	<p style="text-align: right;">Page 84</p> <p>1 A No. No.</p> <p>2 Q Do you ever visit any investment-related chat rooms?</p> <p>3 A I read the Sirius chat room. That's about it.</p> <p>4 Q How do you spell that?</p> <p>5 A S-i-r-i-u-s.</p> <p>6 Q And what kind of chat room is that?</p> <p>7 A It's on the AOL page for Sirius Radio, and you can just click on e-mails. What is it? I've forgotten what you click on, but it's just e-mails or commentary or whatever it is. And then it just lists all of the e-mails that people have sent in. Some of it is, you know, information. That's where I would hope to find some information, but it's --</p> <p>8 Q Is it investment-related information?</p> <p>9 A Yeah.</p> <p>10 Q Okay. Do you ever post e-mails on there?</p> <p>11 A No, never have. It's entertainment.</p> <p>12 Q Did you ever read anything about --</p> <p>13 A Not to be -- not to be taken --</p> <p>14 MR. MOSSER: Wait --</p> <p>15 A -- "seriously." I'm -- I was finishing up.</p> <p>16 Sorry.</p> <p>17 MR. MOSSER: Okay.</p>
<p style="text-align: right;">Page 83</p> <p>1 Q Do you research your investments on-line?</p> <p>2 A On occasion.</p> <p>3 Q Other than Bid to Ask, do you research investments still?</p> <p>4 A Still. No.</p> <p>5 Q Prior to Bid to Ask did you research your investments --</p> <p>6 A Yes.</p> <p>7 Q -- on-line?</p> <p>8 A Yes.</p> <p>9 Q Okay. And how did you do that?</p> <p>10 A Well, I can go to the web page of the firm itself, and America on-line has ways to, you know, click on the web links. And then you can pick up the news and -- well, let's see. I've even had New York Times. And I've subscribed to that "Let Know" -- what is it? I can ask for certain topics to be researched, and then they would send me e-mails of press releases. That's about it.</p> <p>11 Q Okay. And did you ever go to the Wave Systems Web site?</p> <p>12 A We never did.</p> <p>13 Q So sitting here today, you've never been on the Wave Systems Web site?</p>	<p style="text-align: right;">Page 85</p> <p>1 A Not to be taken seriously. I've got to get that pun in.</p> <p>2 Q Oh, I see.</p> <p>3 Q Did you ever read anything about Wave Systems on the Sirius Web site?</p> <p>4 A No.</p> <p>5 Q Do you regularly watch any financial news programs on television?</p> <p>6 A No.</p> <p>7 MR. MOSSER: How soon do you think we can take a bathroom break?</p> <p>8 MS. MARTIN: We can take one in about five minutes. Does that work?</p> <p>9 MR. MOSSER: Cool.</p> <p>10 BY MS. MARTIN:</p> <p>11 Q Do you ever solicit information directly from companies about their stock?</p> <p>12 A No.</p> <p>13 Q Do you read trade publications?</p> <p>14 A What's a trade publication?</p> <p>15 Q I'm imaging that a trade publication would be like a newsletter about the -- like, for example, the digital security industry.</p> <p>16 A No.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q Do you ever read brokerage firm or analyst 2 reports? 3 A On occasion, if it's a web link on a -- like 4 Sirius, somebody will send in a web link to an analyst, 5 opinions about the stock. 6 Q Did you ever read any analyst opinions on Wave 7 Systems? 8 A No. 9 Q Do you read SEC filings prospectuses -- 10 A No. 11 Q -- that type of thing? Did you ever read an 12 SEC filing or prospectus for Wave Systems? 13 A No. 14 Q Do you have any other sources of information 15 about investments that we haven't covered today? 16 A Sources of information. How about quarterly 17 reports or those things they mail to you? 18 Q Okay. So a company-issued quarterly report? 19 A Company-issued quarterly report. 20 Q And do you receive and review those for the 21 companies that you invest in? 22 A Not much. 23 Q Do you receive them? 24 A I receive them. I'll go through them. And</p>	<p style="text-align: right;">Page 88</p> <p>1 A No. 2 Q Have you ever listened to an investor 3 conference call? 4 A I don't think so. 5 Q Have you ever read the transcript of an 6 investor conference call? 7 A I don't recall that I've done that. I would 8 think that would be -- 9 Q Have you ever belonged to an investment club? 10 A No. 11 MS. MARTIN: All right. Now's a good time for 12 a break. 13 (Break taken.) 14 MS. MARTIN: Back on the record. 15 BY MS. MARTIN: 16 Q Mr. Harmon, when did you first become aware 17 that Wave Systems existed? 18 A Well, it would be in -- when the news was 19 announced and was published in the New York Times. That 20 would be July or July 31st or August 2nd. It's right in 21 there. I learned about it soon after that announcement. 22 Q Did you learn about Wave Systems through the 23 New York Times article? 24 A First we noticed it was up in volume. Might</p>
<p style="text-align: right;">Page 87</p> <p>1 they'll ask for voting on the issues before the board, 2 and I frequently vote on those. 3 Q Did you ever review a quarterly report for Wave 4 Systems that you received? 5 A No. I'm not sure I received one. I don't 6 recall it. 7 Q So you don't recall receiving or -- 8 A Uh-uh. 9 Q -- reviewing -- 10 A Don't -- 11 Q -- a Wave Systems quarterly report? 12 A Don't recall it, no. 13 Q Could you identify all the individuals with 14 whom you discussed your purchases of securities? 15 A I don't really discuss them with much of 16 anyone, just my friend Scott. And I have discussed them 17 with Charles at the Bid to Ask. 18 Q Did you discuss your Wave purchase with anyone 19 other than Scott? 20 A No. 21 Q You did discuss it with Scott, though, correct? 22 A Yes. Yes. We both had the same article. 23 Q Do you ever listen to investor conference 24 calls?</p>	<p style="text-align: right;">Page 89</p> <p>1 have been before that. Might have been just a few days 2 before that when it hit the list of the top-traded 3 stocks. So we were looking at a list of stocks. WAVX 4 was one of them. And it was a good price. And so then 5 I think that preceded -- I'm sure that that preceded the 6 news announcement. So we had it on a list, and then the 7 news announcement came. And then that confirmed -- or 8 not confirmed, but it shed light on why this was a good 9 investment. 10 Q And the list that you keep referring to is the 11 Wall Street Journal high-volume list; is that correct? 12 A I think that's it, yes. 13 Q Okay. 14 A Yes. 15 Q And, to the best of your recollection, what 16 companies appear on that list? 17 A Those whose stocks are trading with what -- 18 who's -- the volume has gone up steeply, and that's what 19 puts them on the list. 20 Q And do you know what number Wave Systems was on 21 that list? 22 A No, uh-uh. It was -- I know it was down -- I 23 mean, it's a list of 15 or so, I believe, and it was 24 kind of like maybe the tenth slot. It was in there</p>

<p style="text-align: right;">Page 90</p> <p>1 someplace, but not at the top, not at the bottom.</p> <p>2 Q And do you still have that list, that --</p> <p>3 A Oh, no. I don't keep --</p> <p>4 Q -- list in your possession?</p> <p>5 A I don't keep such material.</p> <p>6 Q And what about the New York Times article that</p> <p>7 you referred to? Did you keep a copy of the New York</p> <p>8 Times article?</p> <p>9 A No. No. It was --</p> <p>10 Q Do you remember reading the entire New York</p> <p>11 Times article at the time you saw it?</p> <p>12 A Yes.</p> <p>13 Q And prior to your first purchase, were you</p> <p>14 aware of any revenue projections or expectations for</p> <p>15 Wave?</p> <p>16 A No.</p> <p>17 Q Prior to your first purchase of Wave stock, did</p> <p>18 you do any research about Wave or the digital securities</p> <p>19 products that you haven't already mentioned?</p> <p>20 A Not that I'm aware; not that I recall.</p> <p>21 Q Did any broker, investment advisor or your</p> <p>22 friend Scott make any investigation of Wave or the</p> <p>23 digital securities products industry other than what</p> <p>24 you've already described?</p>	<p style="text-align: right;">Page 92</p> <p>1 reflects the settlement date or the actual trade date?</p> <p>2 A There's a T date on the list, and I take it the</p> <p>3 T stands for trade.</p> <p>4 Q And is that the date you used to fill out this</p> <p>5 certification? Was it the trade date?</p> <p>6 A Yes.</p> <p>7 Q Or the -- I'm sorry, it was the T date?</p> <p>8 A T date.</p> <p>9 Q Thank you.</p> <p>10 A Right.</p> <p>11 Q And do these -- to the best of your</p> <p>12 recollection, are these the days that you purchased --</p> <p>13 A Yes.</p> <p>14 Q -- Wave stock on?</p> <p>15 A Yes, correct.</p> <p>16 Q So you purchased 5,000 shares of Wave stock for</p> <p>17 \$5.19 on August 5th, 2003; is that correct?</p> <p>18 A That's correct.</p> <p>19 Q Okay. And what was the source of funds you</p> <p>20 used to purchase that stock?</p> <p>21 A The TD Waterhouse rollover account.</p> <p>22 Q And approximately what time of day did you make</p> <p>23 that trade, if you recall?</p> <p>24 A No, I don't.</p>
<p style="text-align: right;">Page 91</p> <p>1 A No broker certainly. Scott might have looked</p> <p>2 up other information, but I'm not aware of what that</p> <p>3 would be, if he did.</p> <p>4 Q Do you think he did or --</p> <p>5 A I really don't know.</p> <p>6 MS. MARTIN: I'd like to mark as Exhibit 32</p> <p>7 Certification of Named Plaintiff Pursuant to Federal</p> <p>8 Securities Laws, Gary L. Harmon.</p> <p>9 (Harmon Exhibit Number 32 was marked for</p> <p>10 identification.)</p> <p>11 A What's this? Oh.</p> <p>12 MR. MOSSER: Thanks.</p> <p>13 BY MS. MARTIN:</p> <p>14 Q Do you recognize this document?</p> <p>15 A Yes.</p> <p>16 Q And what is this document?</p> <p>17 A Well, it is the sheet I filled out in response</p> <p>18 to the original mailing that I received from Schiffrin.</p> <p>19 Q And does this accurately reflect your trading</p> <p>20 in Wave Securities to this date?</p> <p>21 A Well, I think these are correct. They would be</p> <p>22 the figures I took from my Waterhouse account, and they</p> <p>23 would be -- I hope I copied them correctly, yes.</p> <p>24 Q And do you know if your Waterhouse account</p>	<p style="text-align: right;">Page 93</p> <p>1 Q And why did you purchase Wave stock on August</p> <p>2 5th, 2003?</p> <p>3 A Because I felt certain that the Wave security</p> <p>4 device that was to be embedded on the Intel computers</p> <p>5 would produce a tremendous income source for Wave</p> <p>6 Systems.</p> <p>7 Q Did a broker or anyone else recommend to you</p> <p>8 that you buy Wave stock on August 5th, 2003?</p> <p>9 A Did a broker or anyone? No, not really. My</p> <p>10 friend Scott certainly thought it would be okay, but,</p> <p>11 then, I considered that with -- basically it's the</p> <p>12 information that we found in the New York Times --</p> <p>13 Q I'm sorry. Go ahead.</p> <p>14 A -- about the embedding of the security device.</p> <p>15 Q Did Scott also make a purchase on August 5th,</p> <p>16 2003, if you know?</p> <p>17 A He made a purchase. I don't know on what day.</p> <p>18 Q And what was the size of the purchase that he</p> <p>19 made?</p> <p>20 A We didn't discuss that. That's his business.</p> <p>21 Q Okay. So as of your first purchase of Wave on</p> <p>22 August 5th, 2003, what, if anything, had you read about</p> <p>23 Wave?</p> <p>24 A Just the article in the New York Times and the</p>

Page 94	Page 96
1 listing on the top 15-volume stocks --	1 5th, 2003, at the time of your first purchase?
2 Q And --	2 A Okay. That the inflation of the price
3 A -- trade.	3 occurred --
4 Q I'm sorry?	4 MR. MOSSER: Do you understand the question?
5 A The top volume in trading stocks.	5 THE WITNESS: I'm not absolutely certain.
6 Q And were you aware of any forecast for revenue	6 A That's why I'm really kind of putting it back
7 at the time of this purchase?	7 to you, the question, here.
8 A Whose forecast?	8 Q Sure. Let me -- do you know what the phrase
9 Q Wave's forecast for revenue.	9 artificially inflated means?
10 A Well, they certainly -- they were forecasting,	10 A Artificially inflated? Yes, define that.
11 you know, a great increase in their revenue, yes. I	11 What's that about?
12 mean, that was the idea. If they had this product, then	12 Q Okay. I guess if you don't understand what
13 they would have a great income.	13 that phrase means, I might not ask the question. Do you
14 Q Was everything that you understood about Wave	14 understand what the phrase artificial inflation means?
15 Systems's revenue forecasting coming from the New York	15 A Does it mean pumping up the stock by giving the
16 Times article?	16 public an impression that is not quite true?
17 A Yes.	17 Q That's a fair description, okay. So assuming
18 Q So you weren't aware of any particular forecast	18 that that's the definition, is it your contention that
19 of a number?	19 the price of Wave stock was pumped up on August 5th,
20 A Oh, no.	20 2003?
21 Q What was your understanding of the relationship	21 A That's my impression.
22 between Intel and Wave Systems at the time of your first	22 Q Is it your contention in this lawsuit?
23 purchase?	23 A Yes.
24 A My understanding was that Wave Systems and	24 Q And was your next purchase of Wave stock later
Page 95	Page 97
1 Intel had a contract whereby Wave Systems would supply a	1 that same day on August 5th, 2003?
2 Wave security device, system, software, whatever it is,	2 A Yes.
3 that would be embedded or implanted in the Intel	3 Q And did you purchase an additional 5,000 shares
4 computers that people would buy.	4 of Wave stock at \$5.03 per share?
5 Q And was it your understanding that Intel was	5 A Yes.
6 required to purchase a minimum number of software units	6 Q And what was the source of funds for that
7 from Wave Systems to embed?	7 purchase?
8 A I don't recall that.	8 A The rollover account at TD Waterhouse.
9 Q Was it your understanding that they were	9 Q Approximately what time of day did you make
10 required to purchase any of these security systems?	10 that purchase?
11 A That was the understanding, that -- that they	11 A I don't know.
12 would be -- that they would be installed in the	12 Q Well, can you give me an estimate, because this
13 computers. Of course they'd have to buy them to do	13 is kind of important? Do you know how long after the
14 that.	14 first purchase you made the second purchase?
15 Q And where did this understanding come from?	15 A You know, I can't recall that.
16 A From the news article.	16 MR. MOSSER: If you can't recall, don't guess.
17 Q When you say the news article, the New York	17 THE WITNESS: Okay.
18 Times article?	18 A It was just a period of time. I don't know.
19 A New York times article, correct.	19 Enough to watch the stock.
20 Q Okay. And what was your understanding of how	20 Q Why did you make two separate purchases of Wave
21 much money Intel would have to pay Wave?	21 on August 5th, 2003?
22 A There's no precise number that I was aware of.	22 A Because I didn't make the total purchase to
23 Q Is it your contention in this lawsuit that the	23 begin with, so I divided -- I thought I will try just
24 price of Wave stock was artificially inflated on August	24 5,000 to start with and see what happens to the price.

<p style="text-align: right;">Page 98</p> <p>1 And the price came down, so I thought, Well, it's 2 probably -- it's a better price so I will try to average 3 down.</p> <p>4 Q Did a broker or anyone else, including Scott, 5 recommend that you make the second purchase?</p> <p>6 A No. The -- no.</p> <p>7 Q Had you read anything new about Wave at the 8 time of your second purchase?</p> <p>9 A No.</p> <p>10 Q Had you learned anything new about Wave other 11 than the price of the stock?</p> <p>12 A No. All the purchases were based upon the 13 information that I've described, article.</p> <p>14 Q And what was your understanding of why the 15 price had dropped from \$5.19 to \$5.03 during the day of 16 August 5th, 2003?</p> <p>17 A My understanding was that people were buying 18 and selling, and there were some sales that brought the 19 price down.</p> <p>20 Q And what is that understanding based upon?</p> <p>21 A Experience with the market. People buy and 22 sell, and so the stock rises and it falls according to 23 the rhythm of the volume of buys and sells.</p> <p>24 Q So you didn't have any specific information --</p>	<p style="text-align: right;">Page 100</p> <p>1 A Nothing.</p> <p>2 Q And later that same day you made another 3 purchase of Wave, and you purchased 1900 shares at 4 \$3.24; is that correct?</p> <p>5 A That is correct.</p> <p>6 Q And do you recall what time of day you made 7 this purchase?</p> <p>8 A No.</p> <p>9 Q And why did you make a second purchase of Wave 10 on August 6, 2003?</p> <p>11 A I was still considering it, and I thought that 12 I needed to shore up my investment, average down the 13 price a little more, and so I put in another buy order.</p> <p>14 Q Did a broker or Scott or anyone else recommend 15 that you make this purchase?</p> <p>16 A No.</p> <p>17 Q What, if anything new, had you learned about 18 Wave at the time of this purchase?</p> <p>19 A Nothing.</p> <p>20 Q Were you aware of any Wave's forecast for 21 revenue at the time of this purchase?</p> <p>22 A Nothing new.</p> <p>23 Q Okay. Any other information that you haven't 24 described that you relied on to make these purchases?</p>
<p style="text-align: right;">Page 99</p> <p>1 A No.</p> <p>2 Q -- indicating that that was the reason the 3 price had dropped; is that correct?</p> <p>4 A That's correct.</p> <p>5 Q And did you purchase an additional 1,100 shares 6 of Wave again on August 6th, 2003, for \$3.23?</p> <p>7 A That's correct.</p> <p>8 Q And what was your understanding as to why the 9 stock price had dropped almost \$2 from the previous day 10 when you made your first purchase of Wave stock?</p> <p>11 A People were taking profits.</p> <p>12 Q And what is this understanding based upon?</p> <p>13 A Market experience.</p> <p>14 Q So you didn't have any specific information at 15 this time?</p> <p>16 A No.</p> <p>17 Q And what time of day did you make this 18 purchase, if you can recall?</p> <p>19 A I can't recall at all.</p> <p>20 Q Did a broker or Scott or anyone else recommend 21 that you make this purchase on August 6, 2003?</p> <p>22 A No.</p> <p>23 Q And what, if anything new, had you read or 24 learned about Wave at the time of this purchase?</p>	<p style="text-align: right;">Page 101</p> <p>1 A No. Same -- the same information as before.</p> <p>2 Q Now, have you ever purchased or sold any Wave 3 security other than what you've just described?</p> <p>4 A No.</p> <p>5 Q So you still own 30,000 shares of Wave; is that 6 correct?</p> <p>7 A 13,000.</p> <p>8 Q I'm sorry, 13,000.</p> <p>9 A Yes.</p> <p>10 Q And, approximately, in total, do you know how 11 much you paid for those shares?</p> <p>12 A It would be about 63,000.</p> <p>13 Q And do you know what the current market price 14 of those shares is?</p> <p>15 A Yes.</p> <p>16 Q And what is the current market price?</p> <p>17 A About 80 cents.</p> <p>18 Q So your current -- the current value of your 19 Wave stock positions is approximately 24,000; is that 20 right?</p> <p>21 A No.</p> <p>22 Q No?</p> <p>23 A Be more like 10,000, if that.</p> <p>24 Q So it's 13,000 times .08, right? Okay.</p>

<p style="text-align: right;">Page 102</p> <p>1 So are you concerned that the stock price of 2 Wave may continue to drop further than it already has 3 since your original purchases?</p> <p>4 A That seems to be a bottom. Well, it can go 5 down into the 60s, as I've seen. There seems to be a 6 limit bottom, bedrock or something. I certainly hope it 7 won't go off the map.</p> <p>8 Q Had you ever thought about whether the value of 9 Wave stock may go down because of this lawsuit?</p> <p>10 A It's already gone down. I think it's taken the 11 hit.</p> <p>12 Q Have you -- I guess could you answer my 13 question: Have you thought about before today --</p> <p>14 A Oh, have I thought about it?</p> <p>15 Q -- whether the value could go down because of 16 this lawsuit?</p> <p>17 A I've thought about it briefly.</p> <p>18 Q And what was the conclusion that you came to?</p> <p>19 A It's already taken its hit.</p> <p>20 Q But it could go down further, could it not?</p> <p>21 A Might go back down into the 60s.</p> <p>22 Q But you hope that doesn't happen; is that 23 right?</p> <p>24 A One can hope always.</p>	<p style="text-align: right;">Page 104</p> <p>1 Q Do you know if he's upset because of that loss?</p> <p>2 A He -- I'm sure he was at the time because he 3 doesn't like to lose, but he -- he's moved on.</p> <p>4 Q What do you mean by that?</p> <p>5 A He's gotten out of buying stocks and has bought 6 a mutual fund that's paying very well. He goes out and 7 plays golf.</p> <p>8 Q A hedge fund? Is he a hedge fund advisor? Is 9 that --</p> <p>10 A It could be.</p> <p>11 Q -- what he does?</p> <p>12 A It could be. I'm not sure. It might be 13 T. Rowe Price or any fund. I don't know. He did tell 14 me once. It's with Charles Schwab, I can tell you that.</p> <p>15 Q Do you know if any of your family members own 16 Wave stock?</p> <p>17 A No.</p> <p>18 Q Does any business --</p> <p>19 A Wait a minute. Wait a minute.</p> <p>20 Q Go ahead.</p> <p>21 A Any of my family members?</p> <p>22 Q Yes.</p> <p>23 A Let me see. My wife, three sons. Yes, I do. 24 They don't own anything.</p>
<p style="text-align: right;">Page 103</p> <p>1 Q So is that a, yes, you hope it doesn't go down 2 further?</p> <p>3 A That's correct.</p> <p>4 Q Do you know if any of the other class members 5 still own shares of Wave stock?</p> <p>6 A I don't know that.</p> <p>7 Q Do you know if Scott is a member of the class, 8 your friend Scott?</p> <p>9 A Scott would be a member of the class, yes.</p> <p>10 Q Have you discussed this lawsuit with Scott?</p> <p>11 A No. He knows about it. I just said that I am 12 a lead plaintiff in this suit, and he said, "Oh." And 13 so that's it.</p> <p>14 Q Is that all that you and Scott discussed about 15 this lawsuit?</p> <p>16 A Correct.</p> <p>17 Q Do you know if he had any interest in being a 18 named plaintiff in this lawsuit?</p> <p>19 A I don't know.</p> <p>20 Q Do you know if he took a loss from his Wave 21 stock?</p> <p>22 A He did.</p> <p>23 Q Do you know how much of a loss he took?</p> <p>24 A No.</p>	<p style="text-align: right;">Page 105</p> <p>1 Q Okay.</p> <p>2 A Of course.</p> <p>3 Q Okay. Do any businesses in which you or a 4 family member have an interest own Wave stock?</p> <p>5 A No.</p> <p>6 Q So your partnership doesn't own any Wave stock?</p> <p>7 A No, absolutely not.</p> <p>8 Q And did you purchase Wave stock in 2003 in 9 order to make a short-term profit?</p> <p>10 A Well, I purchased it to make a profit. I 11 didn't know whether it would be short-term or not. I 12 hoped it would be short term, but I knew that it might 13 be a long-term.</p> <p>14 Q Do you still have hopes or expectations that 15 the stock price would go up?</p> <p>16 A I'm a hopeful individual.</p> <p>17 Q Is that a yes?</p> <p>18 A I continue to be hopeful, yes.</p> <p>19 Q Have you continued to follow the price and --</p> <p>20 A Yes.</p> <p>21 Q -- information -- I'm sorry. Let me finish the 22 question.</p> <p>23 A Yeah.</p> <p>24 Q Have you continued to follow the price of Wave</p>

<p>1 stock?</p> <p>2 A Yes.</p> <p>3 Q Have you continued to follow the information</p> <p>4 released by Wave regarding its products and --</p> <p>5 A Other information, no; uh-uh.</p> <p>6 Q So you --</p> <p>7 A I haven't followed it.</p> <p>8 Q Have you read any articles about Wave since --</p> <p>9 A I may have.</p> <p>10 Q -- since the New York Times article?</p> <p>11 A I may have, but I don't recall what they would</p> <p>12 be. I may have, because I read a lot of stuff.</p> <p>13 Q Do you have any understanding about how you</p> <p>14 expect Wave stock to do in the future?</p> <p>15 A No, I don't.</p> <p>16 Q Do you know what the term gross margin</p> <p>17 contribution means?</p> <p>18 A No.</p> <p>19 Q When did you first consider bringing a lawsuit</p> <p>20 against Wave?</p> <p>21 A When I received in the mail the -- I received</p> <p>22 the mail from -- I think it was from Darren Clark, from</p> <p>23 Schiffрин, to say that there is a lawsuit going forward</p> <p>24 and would I like to be a part of it.</p>	<p>Page 106</p> <p>1 really don't follow the stock -- these details that</p> <p>2 closely.</p> <p>3 Q Okay. So now let's jump ahead again. And I</p> <p>4 asked you when did you first consider bringing a lawsuit</p> <p>5 against Wave. What was the nature of the claim that you</p> <p>6 thought that you had?</p> <p>7 A Well, that was in -- by the way, I didn't name</p> <p>8 the date. I think it was in March of 2004.</p> <p>9 Q Okay.</p> <p>10 A And the nature of the claim is that the public</p> <p>11 or -- publicly disseminated statements from Wave Systems</p> <p>12 Corporation offered information about the embedding of</p> <p>13 the Wave security device or software that was false,</p> <p>14 that the -- that, in fact, the software was not going to</p> <p>15 be embedded, and the company knew that. And even though</p> <p>16 they knew that nevertheless put that information out to</p> <p>17 the public.</p> <p>18 Q Okay.</p> <p>19 A And that's a violation of security law.</p> <p>20 Q So is it your understanding that Wave said that</p> <p>21 the security software would be embedded and, in fact, it</p> <p>22 was not going to be embedded?</p> <p>23 A That's -- well, that's the way it's turning</p> <p>24 out, that the statement was published that we depended</p>
<p>Page 107</p> <p>1 Q Let me just go back a second. I think I -- I</p> <p>2 need to ask one more question.</p> <p>3 Prior to your first purchase of Wave, did you</p> <p>4 know anything about Wave having a private placement of</p> <p>5 series H stocks and warrants in April of 2003?</p> <p>6 A I did not.</p> <p>7 Q Are you aware of that today?</p> <p>8 A I am today.</p> <p>9 Q Okay. What is your understanding of what that</p> <p>10 was about?</p> <p>11 A To explain it, I'm not an explainer of that.</p> <p>12 I've read about it in the brief, I believe, but to try</p> <p>13 to explain it myself, it's not something that I</p> <p>14 committed to memory.</p> <p>15 Q Do you know what relation, if any, it has to</p> <p>16 your lawsuit?</p> <p>17 A I think it demonstrates the financial situation</p> <p>18 the Wave Systems executives found themselves in and from</p> <p>19 which they needed to extricate themselves.</p> <p>20 Q Can you explain what you mean by that, or is</p> <p>21 that sort of -- is that the extent of your</p> <p>22 understanding?</p> <p>23 A That's -- I'm really very general about that,</p> <p>24 yes. Like -- I suspect I'm just like anybody else. I</p>	<p>Page 109</p> <p>1 upon, that it was embedded -- to be embedded, and that,</p> <p>2 upon review and further scrutiny by the SEC, they found</p> <p>3 that that was not a true statement.</p> <p>4 Q And when you say that was not a true statement,</p> <p>5 what statement are you referring to? I just want to</p> <p>6 make sure the record's clear.</p> <p>7 A The embedment -- the embedding statement, the</p> <p>8 statement that the Wave security system -- security</p> <p>9 device was to be embedded in Intel computers.</p> <p>10 (Brumbaugh Exhibit 24, previously marked, was</p> <p>11 referred to.)</p> <p>12 BY MS. MARTIN:</p> <p>13 Q Okay. I'm going to mark -- actually, I'm going</p> <p>14 to show you what's been previously marked as Exhibit 24</p> <p>15 as the amended complaint.</p> <p>16 MR. MOSSER: Are we done with --</p> <p>17 MS. MARTIN: Yes.</p> <p>18 MR. MOSSER: -- 29 and 30 --</p> <p>19 MS. MARTIN: Uh-huh.</p> <p>20 MR. MOSSER: -- and 32 and -- actually, I think</p> <p>21 one of those is my copy.</p> <p>22 THE WITNESS: Oops.</p> <p>23 MR. MOSSER: Thanks.</p> <p>24 THE WITNESS: 24?</p>

	Page 110		Page 112
1	MR. MOSSER: Yes.	1	Q That you provided to your attorneys?
2	MS. MARTIN: Are we missing 31? Oh, here it	2	MR. MOSSER: Objection. Objection. Don't
3	is.	3	answer -- don't answer that.
4	BY MS. MARTIN:	4	Q Did you provide information to your attorneys
5	Q Okay. Have you seen this document before?	5	for preparation of the amended complaint?
6	A Yes, I have.	6	A Not that -- I don't believe so. No.
7	Q Okay. And what is this document?	7	Q And can you describe to me each
8	A Well, this is the class -- this was an amended	8	misrepresentation or omission that you're alleging the
9	class-action complaint for -- about the violations of	9	defendants in this case made?
10	the federal security law.	10	A No, I don't commit these things to memory. I
11	Q When did you first see this document?	11	know it's in the document. Once I read it and I'm
12	A When did I see it? Let's see. The amended	12	assured that it's in there -- I mean, that really is
13	one? Well, it would have been last fall -- I mean, the	13	what -- I have the attorneys to do this, so I depend
14	fall of 2004. Yeah. Is that 2004? It would be --	14	upon them to itemize these things. I've reviewed it,
15	Q Do you know if you saw this document before it	15	and then I see, oh, that -- of course, there's a lot
16	was filed?	16	more information than I was ever aware of. But I
17	A Oh, absolutely. All these documents were sent	17	couldn't -- I, myself, itemize it. I don't carry these
18	to me so that I could see what the case was and how it	18	things around in my head, no.
19	was presented and then comment on that, as I -- as I	19	Q I'd like to -- actually, I'll take that back,
20	could. And then I had a conversation -- phone	20	24 back. Thanks.
21	conversation with -- okay.	21	A Uh-huh.
22	Q Don't tell me what -- you don't have to tell me	22	(Off-the-record discussion.)
23	what you said in the conversation --	23	(Brumbaugh exhibit 8, previously marked, was
24	A Yes.	24	referred to.)

	Page 111		Page 113
1	Q -- but you reviewed it before it was filed?	1	BY MS. MARTIN:
2	A That's correct.	2	Q I'd like to show the witness what was
3	Q Did you participate in the preparation of this	3	previously marked as Exhibit 8, the Wave Systems
4	document?	4	announcement.
5	A I did not.	5	MR. MOSSER: 8 was over here somewhere.
6	Q Can you describe in general terms any	6	MS. MARTIN: Am I wrong on 8?
7	differences between the claims asserted in the original	7	MR. MOSSER: I got it.
8	complaint and the amended complaint?	8	MS. MARTIN: Okay.
9	A I certainly -- if I saw those differences, I	9	MR. MOSSER: Are you going to 9 next?
10	certainly would erase them from my memory.	10	MS. MARTIN: Yes.
11	Q So the answer --	11	MR. MOSSER: All right.
12	A No.	12	BY MS. MARTIN:
13	Q -- is, no, you cannot?	13	Q Have you seen this document before today?
14	A No.	14	A Yes.
15	Q Do you know whether the court has issued any	15	Q Okay. When did you first see this document?
16	ruling regarding the amended complaint?	16	A This is yesterday's --
17	A Yes.	17	MR. MOSSER: Objection.
18	Q And what was that ruling?	18	Q You can answer the question. Was it --
19	A It sustained the complaint.	19	yesterday the first day that you saw this document?
20	Q Is -- are the allegations contained in the	20	A Yeah. This specific document? Yesterday.
21	amended complaint based on any information that came	21	Q Okay.
22	from you?	22	A Uh-huh.
23	A That came from -- no, not that came from --	23	Q And did you read it in its entirety yesterday,
24	well, I don't think so.	24	or did you just skim it?

<p style="text-align: right;">Page 114</p> <p>1 MR. MOSSER: Objection. Don't answer that.    2 MS. MARTIN: I don't understand the basis of    3 the objection. Whether he read this document    4 yesterday or not is not privileged.    5 MR. MOSSER: He's answered -- he's answered    6 that he read the document yesterday.    7 MS. MARTIN: I can ask him whether he read it    8 in its entirety or he just skimmed it.    9 BY MS. MARTIN:    10 Q Did you read it in its entirety, or did you    11 just skim it?    12 A I skimmed it and read specific passages very    13 closely.    14 Q Okay. Do you know whether or not you're    15 claiming that this document contains any    16 misrepresentations or material omissions in this    17 lawsuit?    18 A Yes.    19 Q And are you?    20 A Yes.    21 Q Okay. And what are those material omissions    22 or --    23 A Well, the statement that --    24 Q I'm sorry. Let me finish the question.</p>	<p style="text-align: right;">Page 116</p> <p>1 statement that Intel is obligated to bundle Wave    2 software and services with its --    3 A Well, that's what it looks like, yes.    4 Otherwise, why even announce it, unless you were going    5 to say that it would be bundled.    6 Q Well, isn't it possible that they were making    7 the announcement because they licensed to Intel the    8 ability to bundle?    9 A It doesn't say that.    10 Q Well, it says the agreement will enable Intel    11 to bundle. It doesn't say that the agreement will    12 obligate Intel to bundle --    13 MR. MOSSER: Objection.    14 Q -- isn't that correct?    15 A I don't think that's the way a reasonable    16 person would interpret that.    17 Q Okay.    18 A I think most people would read it as they're    19 going to bundle Wave's software into the Intel    20 computers. I think that -- that obviously a great many    21 people read it that way.    22 Q And why -- and why do you say a great many    23 people read it that way?    24 A Because they bought the stock based on this,</p>
<p style="text-align: right;">Page 115</p> <p>1 A Oh, excuse me.    2 Q Can you tell me what material omissions or    3 misrepresentations you're alleging are contained in this    4 document, please?    5 A A misrepresentation is that the agreement    6 that -- second paragraph, "The agreement will enable    7 Intel to bundle Wave's software and services for the    8 future Intel desktop motherboard targeted for    9 trusting -- trusted computing platforms."    10 Q And what is misrepresented in that statement?    11 A Well, bundling is not what actually was the    12 agreement.    13 Q And what was -- what is your understanding of    14 what the agreement actually was?    15 A I don't know what the agreement actually was.    16 We only know that this was not the agreement.    17 Q It says here that the agreement will enable    18 Intel to bundle Wave software and services.    19 A Uh-huh.    20 Q Does that statement indicate to you that Intel    21 is obligated to bundle?    22 A There'd be no point to tell that information    23 otherwise.    24 Q So it is your understanding that -- from this</p>	<p style="text-align: right;">Page 117</p> <p>1 I'll bet you.    2 Q Well, you don't know for a fact whether or not    3 they did, do you?    4 A Well, I can't ask all those people.    5 MR. MOSSER: Objection.    6 Q Okay.    7 A Yeah.    8 Q Is there anything else, any other material    9 misrepresentations or omissions that you are alleging    10 are contained in what's been previously been marked as    11 Exhibit 8?    12 A I'm looking for something here. Well, there's    13 another statement that there was a further -- and, of    14 course, that could be true, indeed, that Wave recently    15 announced a licensing agreement with National    16 Semiconductor to bundle Wave's EMBASSY Trust Suite with    17 the other trusted platform module.    18 I don't know whether that's true or not, but    19 the Intel bundling turned out for sure not to be true.    20 And it may be -- I can't recall whether it was also a    21 problem with the national -- the language there being    22 used to bundle Wave's software into the National    23 Semiconductor modules. So that was yet another --    24 another problem.</p>

<p>1        But basically it's the Intel.  2        MR. MOSSER: I think you've answered the  3        question.  4        THE WITNESS: Yeah.  5        Q    When was the information that was  6        misrepresented in -- or that you're alleging was  7        misrepresented in Exhibit 8 eventually disclosed? Do  8        you understand the question?  9        A    No.  10      Q    Okay. Is it your contention that the market is  11     now aware that this statement --  12      A    Oh.  13      Q    -- was untrue?  14      A    I -- I would think that the market became aware  15     of the untruth of that statement when the SEC said it  16     was going to investigate. And that was in December of  17     2003.  18      Q    Okay. Did you rely on -- on this document to  19     make any of your purchases in Wave stock?  20      A    Not this specific document.  21      Q    Okay. Do you see any information in this  22     document regarding the specific terms of an agreement  23     with Intel?  24      A    Is there information on the specific --</p>	<p>Page 118</p> <p>1        A    Don't recall seeing it, no.  2        Q    Do you know if you're claiming that this  3        document contains any material omissions or  4        misrepresentations in this lawsuit?  5        A    I think this is one of the documents that was  6        referenced in the brief that was filed.  7        Q    And do you know -- can you identify what the  8        material omissions or misrepresentations are that you're  9        alleging?  10      A    I'd have to read through it.  11      Q    Go ahead and take a moment to look through it.  12      A    Uh-huh. I'm not as familiar with this  13     document, and so I -- my comments would be speculative  14     about how it's going to be used in the lawsuit, and --  15     as I don't recall exactly how it's represented in the  16     brief.  17           So I would think that the -- well, I would be  18     speculating there. I'm not supposed to speculate.  19      Q    Did you rely on this document to make any  20     purchases or sales of Wave stock?  21      A    No.  22      Q    Okay. All right. I'll take that one back.  23      MR. MOSSER: This is ours.  24      MS. MARTIN: Oh.</p>
<p>Page 119</p> <p>1        specific agreement?  2        Q    The terms of an agreement.  3        A    The terms of an agreement? Yeah. I don't  4        think so. It's a general statement: They're working  5        closely with Intel.  6        Q    Okay. I'll take that back.  7        (Brumbaugh Exhibit 9, previously marked, was  8        referred to.)  9      BY MS. MARTIN:  10      Q    Please show the witness the document that's  11     been previously marked as Exhibit 9, which is an August  12     4th, 2003, announcement.  13           Have you seen this document before today?  14      A    I don't think so, no.  15      Q    So this isn't one of the documents that you  16     reviewed yesterday?  17      MR. MOSSER: Objection.  18      Q    Did you review this document before today?  19      Have you looked at this document before today?  20      A    I don't recognize it. We may have seen it.  21      MR. MOSSER: Only answer if you know.  22      THE WITNESS: Yeah.  23      MR. MOSSER: Don't speculate.  24      THE WITNESS: Okay.</p>	<p>Page 121</p> <p>1        THE WITNESS: Yeah.  2        MS. MARTIN: I'm not taking it back.  3           All right. Please show the witness what's  4        previously been marked as Exhibit 10, which is a  5        copy of a New York Times article dated August 5th,  6        2003.  7        (Brumbaugh Exhibit 10, previously marked, was  8        referred to.)  9      BY MS. MARTIN:  10      Q    Have you seen this document before?  11      A    Well, I haven't seen this document, this sheet  12     of paper, no.  13      Q    Is this the New York Times article that you  14     were referring to earlier today?  15      A    This seems like it is. You know, it's  16     different from the New York Times article which was, you  17     know, a little thing about like that, you know, four or  18     five-inches long, in a newspaper column, and so this is  19     a different form. But this is the information that I  20     recall from the -- you know, I recognize it as what I  21     have read.  22      Q    Okay. So this in addition to the chart that  23     appeared in the Wall Street Journal --  24      A    Yes.</p>

Page 122	Page 124
<p>1 Q -- are the two pieces of information about Wave  2 that you recall --  3 A Yeah.  4 Q -- reviewing before your purchases; is that  5 correct?  6 A Yeah, sure. Yes.  7 Q Okay. And do you know if you're claiming this  8 document contains any material omissions or  9 misrepresentations?  10 A Yes.  11 Q Okay. Could you identify those for me?  12 A Well, the first line, of course, says it.  13 That's the key, that the Wave Systems Corporation has  14 announced that they have a deal with IBM to embed its  15 security software system inside selected IBM notebook  16 computers.  17 Q And, just for the record, the witness is  18 paraphrasing the sentence. That wasn't an exact --  19 A Yeah.  20 Q -- read of the sentence.  21 A I'm quoting some of it. "... to a deal with  22 IBM to embed its security software inside selected IBM  23 notebook and desktop computers," is an exact quote.  24 So that is indeed what I -- what I remember</p>	<p>1 aware that this information is not true?  2 A I think that -- I think that investors have  3 figured that this is not true. They've concluded from  4 these -- these public statements and remarks that the  5 original assertion was not true.  6 Q And when did the market investors become aware  7 that these statements were not true?  8 A Well, they would, in general, have become aware  9 when the SEC filed its securities case against Wave in  10 December of 2003.  11 Q Is it your understanding that they became aware  12 any time before that?  13 A Well, they may have. The stock was beginning  14 to show serious deterioration, and so lots of people may  15 have become aware before people like me became aware.  16 Q Do you know what contention you're making in  17 this lawsuit as to when this information was disclosed  18 to the market as being untrue?  19 A I don't recall specifically.  20 Q And did you rely upon this document or the  21 information in this document to make purchases of Wave  22 stock?  23 A Certainly, uh-huh.  24 Q Did you rely on it to make all of your</p>
Page 123	Page 125
<p>1 exactly.  2 Q Okay. And are you alleging that that is a  3 misrepresentation or a material omission?  4 A That --  5 MR. MOSSER: Object to the form.  6 Q Do you know whether you're alleging it's a  7 misrepresentation or a material omission?  8 A It's a misrepresentation, in my opinion.  9 Q And what is misrepresented in that sentence?  10 A To embed the -- the embedment of the security  11 software. It was not going to be embedded. And down  12 below, "Wave announced a deal with Intel to embed its  13 software inside some internal computer chassis built by  14 Intel." And I'm quoting there.  15 And my impression is that they were not indeed  16 going to embed software.  17 Q And --  18 A That was not the deal.  19 Q Is it your understanding that the correct  20 information has now been disclosed to the market?  21 A I think it's under investigation. I think that  22 the SEC has investigated them.  23 Q Let me rephrase the question.  24 Is it your understanding that the market is</p>	<p>1 purchases?  2 A Yes, right. You could treat all of those  3 purchases as one, really.  4 Q Okay. Next we'll show the witness what's been  5 previously marked as Exhibit 11.  6 (Brumbaugh Exhibit 11, previously marked, was  7 referred to.)  8 BY MS. MARTIN:  9 Q Have you seen this document before today?  10 A I have seen this.  11 Q When did you first see this document?  12 A Yesterday.  13 Q Okay. Do you know if you're claiming that this  14 document contains any material omissions or  15 misrepresentations?  16 A No, I don't.  17 Q Okay. Did you rely upon this document to make  18 any purchases or sales of Wave stock?  19 A No, I did not.  20 (Brumbaugh Exhibit 12, previously marked, was  21 referred to.)  22 BY MS. MARTIN:  23 Q Okay. All right. Take that one back.  24 Show the witness what's been previously marked</p>

<p style="text-align: center;">Page 126</p> <p>1 as Exhibit 12, which is a transcript dated August 14th, 2 2003.</p> <p>3 A Okay.</p> <p>4 MR. MOSSER: Wait until she has a question.</p> <p>5 Q Have you seen this document before today?</p> <p>6 A If I did I don't recall it.</p> <p>7 Q Do you know whether or not you're claiming 8 this document contains any material omissions or 9 misrepresentations in this lawsuit?</p> <p>10 A I don't recall that.</p> <p>11 Q Did you rely upon the information in this 12 document to make any purchases or sales of Wave stock?</p> <p>13 A No.</p> <p>14 Q Okay. Will you turn to Page 6 of this 15 document?</p> <p>16 A Uh-huh.</p> <p>17 Q And in the middle of the page there's a 18 question from someone named John Lewis --</p> <p>19 A Right.</p> <p>20 Q -- which starts with "Could you touch on." And 21 the question is, "Could you touch on -- did you give any 22 color on the Intel deal and what that could mean for 23 revenues?"</p> <p>24 Could you read out loud the response by Steven</p>	<p style="text-align: center;">Page 128</p> <p>1 hopefully will be larger than the previous month's 2 numbers."</p> <p>3 Q And is it clear from Mr. Sprague's response 4 that the relationship with Intel does not require Intel 5 to purchase any minimum or maximum --</p> <p>6 A Well, this is --</p> <p>7 Q -- products from --</p> <p>8 A This is --</p> <p>9 Q -- Wave?</p> <p>10 A Excuse me.</p> <p>11 Q Any minimum or maximum number of products from 12 Wave?</p> <p>13 A That seems clear after the fact.</p> <p>14 Q And could you turn to -- let's see. The next 15 question from Mr. Lewis is, "Got it. Is it an exclusive 16 with Intel?" Could you read Mr. Sprague's response?</p> <p>17 A "No, it's not an exclusive with Intel. We are 18 a supplier to them. It's a very standard PC OEM 19 industry contract. We built something they think is 20 currently cool. They can replace it when they decide 21 they want to replace it with something else. They can 22 use it as broadly as they want or as little as they 23 want."</p> <p>24 Q And is it clear from Mr. Sprague's response</p>
<p style="text-align: center;">Page 127</p> <p>1 Sprague?</p> <p>2 A Yes. He says, "I haven't been really specific 3 on the numbers for that. And what I can say is" --</p> <p>4 Q I'm sorry. I think you're reading the wrong --</p> <p>5 A Oh.</p> <p>6 Q -- paragraph.</p> <p>7 A Oh.</p> <p>8 Q It's the paragraph below. It begins with "So 9 Intel."</p> <p>10 A Oh. Sprague says, "So Intel hasn't been 11 specific about what their volumes are in the market, and 12 I'll let Intel answer ultimately that volume question. 13 We receive a fee on a per-motherboard basis. There are 14 no minimums in the contract, and there are no maximums 15 in the contract. They decide what products they put it 16 on and how many products they put it on, and we 17 ultimately believe that trusted computing is a very 18 important space for them and for others, so as long as 19 we do a good job and we deliver our product and it works 20 and it's a quality product and delivered on time" -- 21 multiple speakers -- "broadened out across their 22 platform. So it's just premature to answer the 23 question" -- multiple speakers -- "in that when they 24 start shipping next month's numbers next month's numbers</p>	<p style="text-align: center;">Page 129</p> <p>1 that Wave did not have an exclusive deal with Intel and 2 that Intel was not required to bundle any Wave services 3 on Intel motherboards?</p> <p>4 MR. MOSSER: Objection to the form of the 5 question. There's two or three questions.</p> <p>6 Q All right. Let's start with the first 7 question.</p> <p>8 Is it clear from Mr. Sprague's response that 9 Wave did not have an exclusive deal with Intel?</p> <p>10 A That's clear.</p> <p>11 Q Okay. Is it clear from Mr. Sprague's response 12 that Intel was not required to bundle any services on 13 Intel motherboards, any particular number of Wave 14 products on Intel motherboards?</p> <p>15 A That is too -- that too is clear.</p> <p>16 Q Okay.</p> <p>17 A And the date of this is August 14th, I see.</p> <p>18 MR. MOSSER: No.</p> <p>19 THE WITNESS: Okay.</p> <p>20 MS. REILLY: Let me just ask a question off the 21 record. 22 (Off-the-record discussion.)</p> <p>23 BY MS. MARTIN:</p> <p>24 Q And, let's see. Can you look at the bottom of</p>

<p style="text-align: right;">Page 130</p> <p>1 that Page 6? The question is from John Lewis.  2 A Uh-huh.  3 Q "Can you give any color on the IBM deal in  4 terms of what that means for revenues?"  5 MR. MOSSER: Hold on. Where are we, Counsel?  6 Okay. I'm sorry.  7 MS. MARTIN: At the bottom of the page.  8 MR. MOSSER: Okay. I gotcha.  9 Q Can you read Mr. Sprague's response?  10 A "IBM shipped multiple millions of units of TPM  11 platforms in the market, and what we've done is we've  12 certified our technology in a manner that it works  13 against their independent software program. And we're  14 now engaged with them to develop those programs with  15 them to reach out and offer this type of application  16 base to their customers which -- do independently and we  17 can do jointly with them."  18 Q Okay. And then Mr. Lewis asks, "Is theirs  19 similar to the Intel deal in that you can work with them  20 but it's open if you wanted?" Multiple speakers. And  21 could you read Mr. Sprague's response?  22 A Yeah. Sprague's response: "In some ways it's  23 very different. Intel is a customer who's purchased a  24 license to certain software that they have a right to</p>	<p style="text-align: right;">Page 132</p> <p>1 all it says there. They can decide -- IBM can decide  2 what they bundle or not.  3 Q Okay. All right. Let's turn to what's been  4 previously marked as Exhibit 18, I believe, or am I on  5 17?  6 MR. MOSSER: My next one is 17.  7 MS. MARTIN: Okay.  8 MR. MOSSER: We're done with 12?  9 MS. MARTIN: Yes.  10 (Brumbaugh Exhibit 17, previously marked, was  11 referred to.)  12 MR. MOSSER: So we're at 17?  13 MS. MARTIN: Yeah.  14 THE WITNESS: Uh-huh.  15 BY MS. MARTIN:  16 Q Have you seen this document before today?  17 A I probably have.  18 Q Do you know when you first saw this document?  19 A Yesterday.  20 Q Okay. Did you read this document yesterday?  21 A No.  22 Q Did you even skim this document yesterday?  23 A No.  24 Q Okay. Do you know whether you're claiming this</p>
<p style="text-align: right;">Page 131</p> <p>1 bundle, and they can decide what platforms it goes on  2 and what specific services they want to bundle or not  3 bundle.  4 In the case of IBM it's an independent software  5 vendor program where what we have done is certify.  6 They've taken our software, tested it, said, Yes, this  7 does what it does. It uses a TPM properly. It works  8 with the IBM platform. So we can go offer it as an  9 approved supplier to IBM to customers who've purchased  10 TPM platforms, both IBM platforms, although ultimately  11 this will work on any of the TPM platforms."  12 Q And is it clear to you from Mr. Sprague's  13 response that Wave did not have a contract with IBM that  14 required IBM to bundle any Intel products?  15 A It says that Intel is a customer that has  16 purchased a license to certain software that they have  17 the right to bundle and they get to decide.  18 Q Okay. I'm sorry. I was asking actually about  19 IBM.  20 A Oh, the --  21 Q Is it clear from Mr. Sprague's response that  22 Wave didn't have a contract with IBM that required IBM  23 to bundle any of its services?  24 A Well, they have the right to bundle. That's</p>	<p style="text-align: right;">Page 133</p> <p>1 document contains any material misrepresentations or  2 omissions?  3 A I'm assuming that we are.  4 MR. MOSSER: Don't assume.  5 THE WITNESS: Okay.  6 MR. MOSSER: It's yes or no.  7 A I don't know for sure.  8 Q Okay.  9 A No.  10 Q And did you rely on this document in making any  11 purchases --  12 A No.  13 Q -- or sales of Wave Securities?  14 A No.  15 Q All right. Let's move on to Exhibit 18.  16 (Brumbaugh Exhibit 18, previously marked, was  17 referred to.)  18 BY MS. MARTIN:  19 Q Have you seen this document before today?  20 A Yes, very likely in a stack of other documents.  21 Q And do you know when you would have first seen  22 this document?  23 A Yesterday.  24 Q Okay. And did you read this document</p>

<p>1    yesterday?</p> <p>2    A    No.</p> <p>3    Q    Did you skim this document yesterday?</p> <p>4    A    No.</p> <p>5    Q    Do you know whether or not you're claiming this</p> <p>6    document contains any material misrepresentations or</p> <p>7    omissions?</p> <p>8    A    Don't know for sure.</p> <p>9    Q    Did you rely on this document to make any</p> <p>10   purchases or sales of Wave stock?</p> <p>11   A    No.</p> <p>12   Q    All right. Let's move on to Exhibit 19.</p> <p>13        (Brumbaugh Exhibit 19, previously marked, was</p> <p>14   referred to.)</p> <p>15   BY MS. MARTIN:</p> <p>16   Q    Have you seen this document before today?</p> <p>17   A    Yeah.</p> <p>18   Q    And when did you first see this document?</p> <p>19   A    Yesterday.</p> <p>20   Q    And did you read this document yesterday?</p> <p>21   A    No.</p> <p>22   Q    Did you review this document yesterday?</p> <p>23   A    No.</p> <p>24   Q    Do you know if you claim that this document</p>	<p>Page 134</p> <p>1    Wave Systems stock.</p> <p>2    Q    Other than the authorization that you just</p> <p>3    described, are you alleging that Steven Sprague</p> <p>4    conducted any other improper activities?</p> <p>5    A    I could not -- I can't detail those, whether</p> <p>6    there are occasions when he misspoke or misrepresented;</p> <p>7    other occasions, there may be. I'm just aware of the --</p> <p>8    the bundling assertion that he and Feeney authorized.</p> <p>9        MS. MARTIN: Okay. I'm going to take a short</p> <p>10   break, see if I have one or two follow-up questions,</p> <p>11   and then that will be it.</p> <p>12        MR. MOSSER: Okay.</p> <p>13        (Break taken.)</p> <p>14        MS. MARTIN: We'll go back on the record.</p> <p>15        THE WITNESS: Okay.</p> <p>16   BY MS. MARTIN:</p> <p>17   Q    Mr. Harmon, you mentioned earlier today another</p> <p>18   securities lawsuit where you were a witness but not a</p> <p>19   plaintiff or defendant.</p> <p>20   A    Yes.</p> <p>21   Q    Did you receive any compensation for being a</p> <p>22   witness in that case?</p> <p>23   A    No.</p> <p>24   Q    Did you consider any alternatives to bringing</p>	<p>Page 136</p>
<p>1    contains any material misrepresentations or omissions in</p> <p>2    this lawsuit?</p> <p>3    A    Don't know for sure.</p> <p>4    Q    Did you rely on this document to make any</p> <p>5    purchases or sales of Wave stock?</p> <p>6    A    No.</p> <p>7    Q    Okay. Do you know what claims you've brought</p> <p>8    against Steven Sprague?</p> <p>9    A    Generally, yes.</p> <p>10   Q    What is the conduct that you claim Steven</p> <p>11   Sprague engaged in which was improper?</p> <p>12   A    Well, Steven Sprague authorized his</p> <p>13   spokesperson and for -- and the corporation to</p> <p>14   communicate to the general public in news announcements</p> <p>15   that the Wave Securities software was to be bundled in</p> <p>16   the Intel and IBM machines that were sold -- that IBM</p> <p>17   and Intel sold to the public.</p> <p>18   Q    Do you know -- are you alleging in this lawsuit</p> <p>19   that Gerald Feeney conducted or engaged in any improper</p> <p>20   activity?</p> <p>21   A    The improper activity? Yes, the improper</p> <p>22   activity is that he too authorized the promulgation of</p> <p>23   false information to the public which led the public</p> <p>24   to -- like me and the class I represent to purchase the</p>	<p>Page 135</p> <p>1    this lawsuit as a class-action lawsuit?</p> <p>2    A    No.</p> <p>3    Q    And why not?</p> <p>4    A    The attorneys and the firm seemed up on</p> <p>5    everything, seemed to be preparing a very strong case,</p> <p>6    and good researchers, good control of language, good</p> <p>7    reasoning, and I'm really satisfied with them.</p> <p>8    Q    Let me rephrase the question. Did you ever</p> <p>9    consider suing Wave Securities or any of the other</p> <p>10   defendants individually as opposed to as a class?</p> <p>11   A    No.</p> <p>12   Q    And why not?</p> <p>13   A    I don't have enough money or time or interest.</p> <p>14   Q    How much time do you think it's going to take,</p> <p>15   require of you, to be a lead representative in this</p> <p>16   class?</p> <p>17   A    Well, I don't know for sure, but I assume that</p> <p>18   it will take several days of time, if I'm to testify.</p> <p>19   Q    Would you be willing to expend more than that,</p> <p>20   if necessary?</p> <p>21   A    If necessary, depending on when it happened.</p> <p>22   Q    Would you be willing to incur any costs</p> <p>23   yourself for this -- for the prosecution of this action?</p> <p>24   A    A reasonable amount, yes.</p>	<p>Page 137</p>

<p>1 Q And what would be a reasonable amount?</p> <p>2 A Airfare and motel.</p> <p>3 Q So a couple thousand dollars?</p> <p>4 A I would think so.</p> <p>5 Q About the limit of what you'd be willing to</p> <p>6 spend?</p> <p>7 A I would think so.</p> <p>8 Q What is your current relationship with Scott</p> <p>9 Rickter?</p> <p>10 A Rickard.</p> <p>11 Q Rickart.</p> <p>12 A Uh-huh, Rickard, with a D.</p> <p>13 THE COURT REPORTER: Could you spell that,</p> <p>14 please?</p> <p>15 THE WITNESS: Yes. R-i-c-k-a-r-d.</p> <p>16 BY MS. MARTIN:</p> <p>17 Q What is your current --</p> <p>18 A He's a friend, golfing friend, and -- well, we</p> <p>19 go to the symphony together with his -- our wives and</p> <p>20 couples. So we go to the symphony, we'll go out for</p> <p>21 dinner on occasion, maybe a movie. We've had them up</p> <p>22 to -- we rent a condo -- I mean, a home every once in a</p> <p>23 while in Hilton Head or Highlands and have them there.</p> <p>24 They're just good friends.</p>	<p>Page 138</p> <p>1 CERTIFICATE OF OATH</p> <p>2</p> <p>3 STATE OF FLORIDA)</p> <p>4 COUNTY OF DUVAL )</p> <p>5</p> <p>6 I, the undersigned authority, certify that GARY</p> <p>7 L. HARMON personally appeared before me on May 26, 2006,</p> <p>8 and was duly sworn.</p> <p>9 WITNESS my hand and official seal this 1st day</p> <p>10 of June, 2006.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Teresa S. DeCiancio, RDR, CRR, FPR</p> <p>Notary Public - State of Florida</p> <p>19 My Commission expires: July 17, 2009</p> <p>My Commission No. DD 033075</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>Page 139</p> <p>1 Q So they remain close social friends --</p> <p>2 A Social.</p> <p>3 Q -- is that correct?</p> <p>4 A Uh-huh, that's fair.</p> <p>5 Q And other than this approximately six-month</p> <p>6 period where you and Scott did some investing together,</p> <p>7 have you ever done any other business with Scott outside</p> <p>8 of that?</p> <p>9 A No.</p> <p>10 Q And was that the only period of time where you</p> <p>11 were involved with Scott in terms of investing?</p> <p>12 A Correct, yes.</p> <p>13 Q And has he ever indicated to you whether or not</p> <p>14 he agrees with the allegations in this lawsuit?</p> <p>15 A We've never discussed it.</p> <p>16 MS. MARTIN: That's all I have.</p> <p>17 Thank you very much.</p> <p>18 THE WITNESS: Okay.</p> <p>19 (Witness excused.)</p> <p>20 (The deposition was concluded at 12:32 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 141</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 STATE OF FLORIDA)</p> <p>4 COUNTY OF DUVAL )</p> <p>5</p> <p>6 I, Teresa S. DeCiancio, RDR, CRR, FPR, certify</p> <p>7 that I was authorized to and did stenographically report</p> <p>8 the deposition of GARY L. HARMON; that a review of the</p> <p>9 transcript was requested; and that the transcript is a</p> <p>10 true and complete record of my stenographic notes.</p> <p>11 I further certify that I am not a relative,</p> <p>12 employee, attorney, or counsel of any of the parties,</p> <p>13 nor am I a relative or employee of any of the parties'</p> <p>14 attorney or counsel connected with the action, nor am I</p> <p>15 financially interested in the action.</p> <p>16</p> <p>17 DATED this 1st day of June, 2006.</p> <p>18</p> <p>19 Teresa S. DeCiancio, RDR, CRR, FPR</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

Page 142

1 FOR THE DISTRICT OF MASSACHUSETTS

2 ANNE BRUMBAUGH, GARY L. HARMON, )

3 and RANDY K. GRIFFIN, )

4 )

5 Plaintiffs, ) Civil Action

6 ) No. 3:04-CV-30022

7 v. ) (MAP)

8 )

9 WAVE SYSTEMS CORPORATION, )

10 JOHN E. BAGALAY, JR., STEVEN K. )

11 SPRAGUE and GERARD T. FEENEY, )

12 )

13 Defendants. )

14 )

15 IN RE: DEPOSITION OF GARY L. HARMON

16 TAKEN - 5/26/06 DATE SENT TO WITNESS: 6/1/06

17

18 TO: Gary L. Harmon

19 2815 Sylvan Lane North

20 Jacksonville, Florida 32257

21

22 The referenced transcript has been completed and  
awaits reading and signing. Please arrange to stop by  
our office at 345 East Forsyth Street, Jacksonville,  
Florida, 32202, to read and sign the transcript. Office  
hours are from 9:00 a.m. to 4:00 p.m., Monday through  
Friday. The transcript is 138 pages long, and you  
should allow yourself sufficient time.

23 Please complete by July 1, 2006.

24 The original of this deposition has been forwarded to  
the ordering party, and your errata, once received, will  
be forwarded to all ordering parties as listed below.

18 Thank you.

19

20 Teresa S. DeCiancio, RDR, CRR, FPR.

21

22 cc: Todd M. Mosser, Esquire  
Sara A. Martin, Esquire

23

24

Page 143

## 1 E R R A T A S H E E T

2 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES

3 IN RE: ANNE BRUMBAUGH, GARY L. HARMON,  
and RANDY K. GRIFFIN vs. WAVE SYSTEMS CORPORATION, et  
al. Civil Action No. 3:04-CV-30022 (MAP)

4 Gary L. Harmon - 5/26/06

5 PAGE NUMBER LINE NUMBER SUGGESTION/REASON

6

7

8

9

10

11

12

13

14

15

16 Under penalties of perjury, I declare that I have read  
the foregoing document and that the facts stated in it  
17 are true.

18

19

20

21

22

23 DATE GARY L. HARMON  
24 Cc: Teresa S. DeCiancio

Todd M. Mosser, Esquire

Sara A. Martin, Esquire